

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CARRIE SUMMERVILLE)	CIVIL DIVISION
)	
Plaintiff,)	No. 2:09-cv-3261
)	
v.)	
)	
PROGRESSIVE SPECIALTY)	
INSURANCE COMPANY,)	
)	
Defendant.)	The Honorable R. Barclay Surrick

REPLY BRIEF IN SUPPORT OF MOTION TO BIFURCATE AND STAY DISCOVERY

Now comes the Defendant, Progressive Specialty Insurance Company, (“Progressive”), by and through its attorneys, Dapper, Baldasare, Benson, Behling & Kane, P.C., and files a Reply Brief in Support of its Motion to Bifurcate and Stay Discovery.

The principal cases on which the Plaintiff relies are distinguishable because they involve a denial of an insurance claim prior to the lawsuit. Here, the claim for underinsured motorist (“UIM”) benefits has not been denied. Rather, there is a disagreement as to the amount of UIM benefits to which the Plaintiff is entitled. As discovery and investigation are proceeding with regard to the value of that claim, bifurcation would be appropriate.

In Frederick and Emily’s, Inc. v. Westfield Group, No. 03-cv-6589, 2004 U.S. District LEXIS 17274 (E.D. Pa. August 26, 2004), the insurer “denied” the insured’s claim. In Rohm and Haas Company and Morton Inter’l, Inc v. Utica Mut. Ins. Co., No. 07-584, 2008 U.S. Dist. LEXIS 48077 (E.D. Pa. June 20, 2008), the insurer denied that it had a duty to defend its insured.

In contrast, Progressive has not denied Plaintiff's claim for UIM benefits, but has instead made an offer that Plaintiff alleges was unreasonably insufficient.

Wherefore, Progressive respectfully requests that its Motion to Bifurcate and Stay Discovery be granted.

Respectfully submitted,

DAPPER, BALDASARE, BENSON,
BEHLING & KANE, P.C.

By: /s/ Robert E. Dapper, Jr.

Robert E. Dapper, Jr.
PA I.D. #46378
rdapper@d3bk.com

Daniel J. Twilla
PA I.D. #93797
dtwillla@d3bk.com

Four Gateway Center, 10th Floor
444 Liberty Avenue
Pittsburgh, PA 15222
(412) 456-5555

*Attorneys for Defendant, Progressive
Specialty Insurance*

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on September 9, 2009, a copy of the within **REPLY BRIEF IN SUPPORT OF MOTION TO BIFURCATE AND STAY DISCOVERY** was filed electronically. Notice of this filing will be sent to all Parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Daniel M. Jaffe, Esquire
1500 Walnut Street
Suite 1620
Philadelphia, PA 19102

Counsel for Plaintiff

/s/ Robert E. Dapper, Jr.

Robert E. Dapper, Jr.
Daniel J. Twilla